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8 UNITED PARCEL SERVICE, INC.

9  
10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 EASTERN DIVISION  
13

14 JULIO C. DIAZ, individually and on  
behalf of others similarly situated,

15 Plaintiff,

16 vs.  
17

18 UNITED PARCEL SERVICE, INC.,  
19 Defendant.

CASE NO. EDCV09-02279 VBF (DTBx)

**DEFENDANT'S ANSWER TO FIRST  
AMENDED COMPLAINT**

[San Bernardino County Superior Court  
Case No. CIVVS907417]

1 TO PLAINTIFF JULIO C. DIAZ AND TO HIS ATTORNEYS OF RECORD:

2  
3 Defendant UNITED PARCEL SERVICE, INC. ("Defendant"), for  
4 itself alone and no other defendant, hereby answers the unverified First Amended  
5 Complaint ("Complaint") of Plaintiff JULIO DIAZ ("Plaintiff") as follows:  
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7  
8 1. Answering Paragraph 1, Defendant denies, generally and  
9 specifically, each and every allegation contained therein. Defendant further denies,  
10 generally and specifically, that Plaintiff has been damaged as alleged or at all.  
11

12  
13 2. Answering Paragraph 2, Defendant lacks sufficient information  
14 or belief to enable it either to admit or deny any allegation about what Plaintiff  
15 seeks, and on that basis denies, generally and specifically, each and every allegation  
16 contained therein.  
17

18  
19 3. Answering Paragraph 3, Defendant lacks sufficient information  
20 and belief to enable it to admit or deny any allegation about what Plaintiff seeks,  
21 and on that basis denies, generally and specifically, each and every allegation  
22 contained therein, and denies that he has been damaged as alleged or at all.  
23

24  
25 4. Answering Paragraph 4, Defendant admits the allegations  
26 contained therein.  
27

1           5.     Answering Paragraph 5, Defendant admits that venue is proper  
2 in this Court and work was performed by Plaintiff in this District. Except as  
3 hereinbefore expressly admitted and alleged, Defendant denies, generally and  
4 specifically, each and every remaining allegation contained in this paragraph.  
5  
6

7           6.     Answering Paragraph 6, Defendant admits, on information and  
8 belief, that Plaintiff Diaz performed loading for UPS on a part-time basis from  
9 August 2008 to the present, and admits that UPS systems indicate that he held a job  
10 code other than H345. Except as hereinbefore expressly admitted and alleged,  
11 Defendant denies, generally and specifically, each and every remaining allegation  
12 contained in this paragraph.  
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15           7.     Answering Paragraph 7, Defendant denies, generally and  
16 specifically, each and every allegation contained therein.  
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19           8.     Answering Paragraph 8, Defendant admits the allegations  
20 contained therein.  
21  
22

23           9.     Answering Paragraph 9, Defendant lacks sufficient information  
24 and belief to enable it to admit or deny any allegation contained therein, and on that  
25 basis, denies them. Defendant further denies that any of the proposed classes or  
26 subclasses could properly be certified.  
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1           10. Answering Paragraph 10, Defendant denies each and every  
2 allegation contained in this paragraph, and in each of its subparagraphs.  
3

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5           11. Answering Paragraph 11, Defendant denies each and every  
6 allegation contained in this paragraph, and in each of its subparagraphs.  
7

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9           12. Answering Paragraph 12, Defendant lacks sufficient information  
10 and belief to enable it to admit or deny any allegations in this paragraph, and, on  
11 that basis, denies generally and specifically the allegations contained therein.  
12

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14           13. Answering Paragraph 13, Defendant realleges and incorporates  
15 by reference its responses to Paragraphs 1 through 12 as though fully set forth  
16 herein.  
17

18  
19           14. Answering Paragraph 14, the allegations set forth in this  
20 paragraph are legal conclusions to which no response is required; to the extent that  
21 Paragraph 14 contains any factual averments, Defendant denies each and every  
22 such averment.  
23

24  
25           15. Answering Paragraph 15, the allegations set forth in this  
26 paragraph are legal conclusions to which no response is required; to the extent that  
27 Paragraph 15 contains any factual averments, Defendant denies each and every  
28 such averment.

1           16. Answering Paragraph 16, Defendant denies, generally and  
2 specifically, each and every allegation contained therein.  
3  
4

5           17. Answering Paragraph 17, the allegations set forth in this  
6 paragraph are legal conclusions to which no response is required; to the extent that  
7 Paragraph 17 contains any factual averments, Defendant denies each and every  
8 such averment.  
9  
10

11           18. Answering Paragraph 18, Defendant denies, generally and  
12 specifically, each and every allegation contained therein.  
13  
14

15           19. Answering Paragraph 19, Defendant denies, generally and  
16 specifically, each and every allegation contained therein. Defendant further denies,  
17 generally and specifically, that Plaintiff has been damaged as alleged or at all.  
18  
19

20           20. Answering Paragraph 20, Defendant denies, generally and  
21 specifically, each and every allegation contained therein. Defendant further denies,  
22 generally and specifically, that Plaintiff has been damaged as alleged or at all.  
23  
24

25           21. Answering Paragraph 21, Defendant realleges and incorporates  
26 by reference its responses to Paragraphs 1 through 20 as though fully set forth  
27 herein.  
28

1           22. Answering Paragraph 22, the allegations set forth in this  
2 paragraph are legal conclusions to which no response is required; to the extent that  
3 Paragraph 22 contains any factual averments, Defendant denies each and every  
4 such averment.

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7           23. Answering Paragraph 23, the allegations set forth in this  
8 paragraph are legal conclusions to which no response is required; to the extent that  
9 Paragraph 23 contains any factual averments, Defendant denies each and every  
10 such averment.

11  
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13           24. Answering Paragraph 24, Defendant denies, generally and  
14 specifically, each and every allegation contained therein. Defendant further denies,  
15 generally and specifically, that Plaintiff has been damaged as alleged or at all.

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18           25. Answering Paragraph 25, Defendant denies, generally and  
19 specifically, each and every allegation contained therein. Defendant further denies,  
20 generally and specifically, that Plaintiff has been damaged as alleged or at all.

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23           26. Answering Paragraph 26, Defendant realleges and incorporates  
24 by reference its responses to Paragraphs 1 through 25 as though fully set forth  
25 herein.

1           27. Answering Paragraph 27, the allegations set forth in this  
2 paragraph are legal conclusions to which no response is required; to the extent that  
3 Paragraph 27 contains any factual averments, Defendant denies each and every  
4 such averment.

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7           28. Answering Paragraph 28, the allegations set forth in this  
8 paragraph are legal conclusions to which no response is required; to the extent that  
9 Paragraph 28 contains any factual averments, Defendant denies each and every  
10 such averment.

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13           29. Answering Paragraph 29, Defendant admits, on information and  
14 belief, that it received a copy of a letter from Plaintiffs' counsel dated January 19,  
15 2010, addressed to Defendants and to the California Labor and Workforce  
16 Development Agency ("LWDA") stating that it describes the "Labor Code  
17 provisions allegedly violated, and the facts and theories that support the  
18 allegations." Defendants lacks sufficient information and belief to enable to admit  
19 or deny whether the LWDA has notified Plaintiff whether or not it intends to  
20 investigate the alleged violations.

21  
22  
23           30. Answering Paragraph 30, Defendant denies, generally and  
24 specifically, each and every allegation contained therein and in each of its  
25 subparagraphs. Defendant further denies, generally and specifically, that Plaintiff  
26 has been damaged as alleged or at all.



1           31. Answering Paragraph 31, Defendant denies, generally and  
2 specifically, each and every allegation contained therein. Defendant further denies,  
3 generally and specifically, that Plaintiff has been damaged as alleged or at all.  
4

5           32. Responding to the Prayer for Relief, Defendant denies, generally  
6 and specifically, that Plaintiff has been or will be damaged in the sums alleged, in  
7 any other sum, or at all, by reason of any act or omission of Defendant or any  
8 officer, agent or employee of Defendant. Defendant further denies, generally and  
9 specifically, that the elements of relief sought are available to Plaintiffs on the  
10 particular claims alleged.  
11

12  
13           Without admitting any facts alleged by Plaintiff, Defendant also pleads  
14 the following separate and affirmative defenses to the Complaint:  
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16  
17                           AFFIRMATIVE DEFENSES

18                           FIRST SEPARATE AND AFFIRMATIVE DEFENSE  
19

20           33. The Complaint, and each of its causes of action, fails to state  
21 facts sufficient to constitute a cause of action.  
22

23                           SECOND SEPARATE AND AFFIRMATIVE DEFENSE  
24

25           34. The Complaint, and each of its causes of action, is barred in  
26 whole or in part by all applicable statutes of limitation, including but not limited to  
27 Cal. Civ. P. Code §§ 338(a), 340, and Cal. Bus. & Prof. Code § 17208.  
28



1                    THIRD SEPARATE AND AFFIRMATIVE DEFENSE

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3                    35. The Complaint, and each of its causes of action, is barred to the

4 extent Plaintiff, or any purported class members, released claims individually or in

5 conjunction with class action and/or other settlements and judgments.

6

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8                    FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

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10                  36. The Complaint and each cause of action alleged therein is barred

11 to the extent that Plaintiff and/or any class member he purports to represent waived

12 the right, if any, to pursue the Complaint.

13

14                  FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

15

16                  37. The Complaint, and each cause of action therein, is preempted

17 by section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a).

18

19                  SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

20

21                  38. The Complaint, and each cause of action therein, is barred by

22 the statute of limitations applicable to claims arising under section 301 of the Labor

23 Management Relations Act, 29 U.S.C. § 160(b).

24

25                  SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

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27                  39. The sole and exclusive remedy for the allegations made in the

28 Complaint is the CBA's grievance and arbitration procedures.

1 EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

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3 40. Plaintiff's Complaint, and each cause of action therein, is barred  
4 because Plaintiff failed to exhaust the CBA's grievance and arbitration procedures.  
5

6 NINTH SEPARATE AND AFFIRMATIVE DEFENSE

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8 41. The Complaint, and each cause of action contained therein, is  
9 barred by the doctrine of res judicata to the extent any member of the purported  
10 class pursued and resolved to final judgment, individually or as a member of a class  
11 or collective action, any action that did or could have included the claims herein.  
12

13 TENTH SEPARATE AND AFFIRMATIVE DEFENSE

14  
15 42. Plaintiff's cause of action for meal period violations is barred to  
16 the extent that Plaintiff, and the group of persons he purports to represent, waived  
17 their meal periods.  
18

19 ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

20  
21 43. Plaintiff's claim for equitable relief is barred because Plaintiff  
22 has an adequate and complete remedy at law.  
23

24 TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

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26 44. Plaintiffs are barred from recovering statutory penalties under  
27 the California Labor Code because Plaintiffs did not timely exhaust administrative  
28 remedies as required and/or otherwise failed to comply with all the statutory

1 prerequisites to bring suit under the Labor Code Private Attorneys General Act of  
2 2004, California Labor Code § 2698 *et seq.*

3  
4 THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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6 45. To the extent Plaintiffs seek to recover penalties that are  
7 disproportionate to the actual harm suffered, if any, including but not limited to  
8 civil penalties under Labor Code 2699, an award of civil penalties under the  
9 circumstances of this case would constitute an excessive fine and otherwise be in  
10 violation of Defendant's due process and other rights under the United States and  
11 California Constitutions.

12  
13 FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

14  
15 46. Any violation of the California Labor Code or the applicable  
16 wage order was an act or omission made in good faith, and Defendant had  
17 reasonable grounds for believing that the act or omission was not a violation of the  
18 law, so penalties would be inappropriate in this case even should Plaintiffs be  
19 entitled to any wage remedy.

20  
21 FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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23 47. The Complaint is not proper for treatment as a class or collective  
24 action; Plaintiff therefore lacks standing to represent the individuals they purport to  
25 represent.

1                   SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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3                   48. Plaintiff's request for class certification should be denied  
4 because class certification would be inappropriate due to conflicts of interest  
5 between Plaintiffs and proposed class members.  
6

7                   SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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9                   49. Plaintiff's request for class certification should be denied  
10 because liability and/or damages, if any, to each member of the proposed class may  
11 not be determined by a single factfinder or on a group-wide basis, and therefore  
12 allowing this action to proceed as a class or collective action would violate  
13 Defendant's rights to due process and trial by jury.  
14

15                   EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

16  
17                   50. In the event that a class should be certified in this matter,  
18 Defendant incorporates by reference and realleges all of its defenses to Plaintiff's  
19 individual causes of action in response to Plaintiff's causes of action on behalf of  
20 the class and each class member.  
21

22                   NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

23  
24                   51. The Complaint and each of its causes of action are barred in  
25 whole or in part to the extent that Defendant has paid Plaintiff and/or putative class  
26 members all or some of the money they claim is due.  
27  
28

1 TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

2  
3 52. Defendant is entitled to an offset against any relief claimed by  
4 Plaintiff and/or the class he purports to represent for wages Defendant has paid for  
5 time not worked or that otherwise is not required under state and/or federal law.  
6

7 TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

8  
9 53. Neither Plaintiff nor the class he purports to represent may  
10 recover damages in this action because under the circumstances presented that  
11 would constitute unjust enrichment.  
12

13 WHEREFORE, Defendant prays for judgment as follows:

- 14 1. That class certification be denied;  
15 2. That Plaintiff takes nothing by reason of their Complaint, that  
16 the Complaint be dismissed in its entirety with prejudice, and that judgment be  
17 entered for Defendant;  
18 3. That Defendant be awarded its reasonable costs and attorneys'  
19 fees; and  
20 4. That Defendant be awarded such other and further relief as the  
21 Court deems just and proper.

22 DATED: April 29, 2010

PAUL, HASTINGS, JANOFSKY & WALKER  
LLP

23  
24  
25 By 

JEFFREY P. MICHALOWSKI

26 Attorneys for Defendant  
27 UNITED PARCEL SERVICE, INC.  
28